



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Via Media
Information Provider (IP) (if any)	Xplicit Mobile
Service Type	Adult advertising
Source of Complaints	WASPA Monitor
Complaint Number	3618 & 3620
Date received	5 March 2008
Code of Conduct version	5.7

Complaint

The WASPA Monitor lodged two complaints alleging that the flightings of advertisements for two adult services were in breach of section 2.2.1 of the WASPA Advertising Rules in that they occurred during a PG13 rated programme. No further details were provided.

SP Response

The following Response was received:

“The following response covers **both complaints #3618 & #3620** which are due to exactly the same circumstances.

In both cases the WASPA monitor lodged complaints that adult adverts were flighted during PG13 movies.

The following explanation from the IP confirms that:

1. the adverts did not flight **DURING** a PG13 movie, however possibly afterwards;

2. the IP did nothing in contravention of the Code BUT that the process used by DSTV to place the adverts may give the appearance of an incorrect placement.

The IP is therefore not at fault here. This is further supported by the findings in complaint 3147, against Marketel, also lodged by the WASPA Monitor, for the same reasons and dismissed due to the facts as presented.

It's important to note:

- The IP correctly requested placement in an R18 movie,
- The TV station has very strict rules about this type of placement,
- The placement was after 23h00, which through the stations policy mitigates the fact that a R18 program might adjoin a RG13 program.

We trust you'll agree that there was not contravention in this case by our client."

The IP also provided a Response, which it summarised as follows:

"All of our advertisements are placed in R18 films, ActionX however has no advertising breaks during programs and ads are placed just prior to the movie start. In this case the movie prior to the adult program was a PG13 but according to Oracle, this is acceptable to DSTV as the R18 film is advertised as such and this is also after 24h00."

The IP provided email correspondence and documentation in support of the above and set out the steps it had taken after being notified of the Complaint.

"We have immediately drawn booking records in response to this complaint and wish to supply this for your consideration:

- 1.) Booking email sent to Oracle airtime sales for placing of advertisements
- 2.) Confirmed flighting times of the booked advertisements. (4 in total – 2 relating to this complaint)
- 3.) A synopsis of the program flighted on Action X at these times.
- 4.) Programming schedule for these dates from Oracle Air Time Sales.

I have personally confirmed the program run schedule with Oracle Airtime sales (Contact person: Carmen Van Wyk Tel: 011 329-5018), who has confirmed the details supplied herein.

We have further confirmed that no other advertisements for this advertiser were placed or ran during the course of 20-24th February 2008.

DSTV have made very strict rulings regarding the placement of adult advertisements in their programming. In the past they have received customer complaints for advertising that is not in line with the program in which the advertisement takes place and being a pay-channel, insist that the feedback from viewers is taken in an extremely serious light. We, as advertisers on ActionX, have committed to abide by their requirements.”

Sections of the Code considered

The following section of version 5.7 of the WASPA Code of Conduct was considered:

8.1.2. Promotions for adult services must be in context with the publication or other media in which they appear. Services should be in context with the advertising material promoting them. The content of a service should not be contrary to the reasonable expectation of those responding to the promotion.

The following section of the WASPA Advertising Rules was raised and considered:

ADULT CONTENT AND AGE-RESTRICTED SERVICES

No Content Services that may directly or indirectly allow persons under 18 years of age to obtain Adult Content and/or any Age-restricted Content may be advertised in media of general distribution, unless an adult verification process (implemented or approved by the mobile network operators) is in place to prevent – as may be reasonably possible - access to that content service by children.

Advertising material for content services may not contain visual images and/or words or phrases that constitute or depict sexual conduct as defined in the Films and Publications Act 65 of 1996 unless contained in media that has been lawfully authorised to be distributed to and/or viewed by persons over the age of 18 only, and/or media that is distributed under restricted conditions.

If on TV, any advertising of adult content on broadcast channels may only be done during the watershed hours defined by a licensed broadcaster and may not contain any sexual content or nudity in excess of that displayed within the programme the advertisement is placed in.

Decision

The Adjudicator has reviewed the material provided and accepts the versions as advanced by the IP and SP. The Complaint does not specify the time at which the adverts were flighted.

The Adjudicator agrees that the decision made in respect of Complaint 3147 is directly relevant to this matter and further agrees with the finding made by the Adjudicator in that matter as set out below:

“7. It is clear from the record that the SP had every intention that the advertisement be screened during a period of adult programming (called “watershed hours” in the Advertising Rules).

8. I have also been given no reason to disbelieve the SP’s version that it arranged for the advertisement to be screened during such a period of adult programming.

9. It is clearly not the fault of the SP if the broadcaster screened the advert at an inappropriate time in breach of its agreement with the SP, or alternatively screened programming suitable for persons under the age of 18 years during a period that it had told the SP was reserved for adult programming.

10. Had the SP intentionally placed the advertisement in question during a period of adult programming or even if it had done so negligently then I would have had no difficulty in finding a breach of the Code of Conduct. The evidence however shows that any error was made by the broadcaster.

11. I can thus not find that the SP has breached either clause 2.2.1 of the Advertising Rules, or clause 8.1.2 of the Code of Conduct.

12. Should the broadcaster have performed either of the acts set out in paragraph 9, then the proper course is to institute a complaint against the broadcaster with the ASASA.”

The Complaint is dismissed.